

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

FLO & EDDIE, INC., a California corporation, individually and on behalf of all others similarly situated,

Plaintiff,

v.

SIRIUS XM RADIO, INC., a Delaware corporation; and DOES 1 through 10,

Defendants.

Civil Action No.:13-CIV-5784(CM)(HP)

**DECLARATION OF MARK VOLMAN  
IN OPPOSITION TO SIRIUS XM'S  
MOTION FOR SUMMARY  
JUDGMENT**

I, Mark Volman, declare and state as follows:

1. I am one of founding members of the recording group The Turtles and am one of the two principals of plaintiff Flo & Eddie, Inc. ("Flo & Eddie"), the owner of The Turtles' recordings. I submit this Declaration in Opposition to defendant Sirius XM Radio, Inc.'s ("Sirius XM") Motion for Summary Judgment.

2. In 1965, The Turtles were formed by Howard Kaylan, me, Don Murray, Al Nichol, Charles Portz, and Jim Tucker. As with many bands during that time period, we started out playing surf-rock music. On May 24, 1965, the independent record label White Whale Record Co., Inc. ("White Whale") signed The Turtles to a recording agreement. Murray and Portz left the group in 1966 and were subsequently replaced by John Barbata and James Pons. In 1969, John Seiter replaced Barbata.

3. In the late summer of 1965, The Turtles achieved breakthrough success with our cover of the Bob Dylan song "It Ain't Me Babe," which reached the Billboard Top Ten. We had another hit with "You Baby," in 1966. Thereafter, in 1967, we released "Happy Together." That song not only became The Turtles' biggest hit, and was No. 1 on the Billboard chart, but it is widely recognized as one of the great iconic recordings of 1960s, and, in particular, the 1967

social phenomenon known as the “Summer of Love.” We subsequently had hits with “She’d Rather Be With Me,” also in 1967, “Elenore” in 1968 and “You Showed Me” in 1969.

4. In 1970, a dispute arose between The Turtles and White Whale regarding, among other things, royalties that were owed to us. On April 27, 1970, this dispute led to the filing of a complaint by the then-current members of The Turtles against White Whale in Los Angeles Superior Court. In that litigation, we claimed that White Whale had systematically underpaid royalties that were owed to us from the exploitation of The Turtles’ recordings. The parties subsequently agreed to a settlement of the litigation.


5. As part of the settlement with White Whale and in exchange for a release and waiver of claims by The Turtles (including a waiver of the large amount of underpaid royalties owed to The Turtles), White Whale transferred to Kaylan, me, Nichol, Seiter, and Pons all right, title and interest in and to the original master recordings of The Turtles. This transfer included the 100 master recordings listed on Exhibit A to the Complaint in this case.

6. Thereafter, on May 1, 1971, Nichol, Seiter, and Pons transferred to Kaylan and me all of their right, title, and interest in and to The Turtles’ master recordings and the name The Turtles.

7. Ultimately, Kaylan and I transferred all of the rights to The Turtles’ master recordings to Flo & Eddie, a corporation we created in 1971 and which we have owned and controlled exclusively since then. For the last four decades, Flo & Eddie has been exploiting the Turtles’ master recordings by licensing the rights to make and sell records and licensing the rights for The Turtles’ recordings to be used in movies, TV shows, and commercials. More recently, Flo & Eddie has licensed the Turtles’ recordings to The Orchard to be exploited digitally, including through the iTunes and Amazon stores. In addition, Kaylan and I continue to devote significant time and effort to promoting The Turtles and their music, and have been the

main act on annual summer tours, such as the "Happy Together Tour," which features The Turtles and other musical groups from the 1960s.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that this declaration was executed on July 4, 2014 at NASHville TN.

  
Mark Volman